PP

v.

YEO KWEE HUAT

HIGH COURT MALAYA, SHAH ALAM
KN SEGARA J
[CRIMINAL TRIAL NO: 45-80-2003]
27 MARCH 2007

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in dangerous drug - 1393 grammes of 3, 4 Methylenedioxymethamphetamine - Whether accused in possession of dangerous drug - Whether presumption under s. 37(d) DDA rebutted by accused*

The accused, a Singaporean citizen, was caught in the possession of 1393 grammes of 3, 4 Methylenedioxymethamphetamine, a dangerous drug under the Dangerous Drugs Act 1952 ('DDA'). The said drug was found in a cake box in the luggage bag that the accused was carrying at the Kuala Lumpur International Airport after his flight back from Paris. He was detained and charged with the offence of trafficking in dangerous drug under s. 39B(1)(a) DDA. The accused testified that one "Peter" that he had befriended had put the cake box in his luggage bag to be delivered as a gift to a third party in Penang.

Held (convicting the accused and sentencing him to death):

(1) There was no dispute that the cake box was in the exclusive custody and control of the accused at all material times. There was also no evidence that the luggage bag was tempered with by any third party nor was there any evidence that the accused lodged a complaint with the airline concerned or with the police that his bag had been tempered with. On the evidence, the cake box did contain the dangerous drug that was the subject matter of the charge herein. (paras 18 & 19)

(2) There was no evidence that the character "Peter" alluded to by the accused existed. The accused did not call "Peter" to testify on his behalf nor did the accused testify that he had given all the relevant particulars of "Peter" for the police to trace him. In the circumstances, the accused had not rebutted, on a balance of probabilities, the statutory presumption under

s. 37(d) DDA that he was in possession of the dangerous drug and knew the nature of such drug. The prosecution had, therefore, proved beyond reasonable doubt that the accused was in possession of the dangerous drug. The accused's overt act in keeping the dangerous drug inside the cake box in his bag and carrying it all the way from Paris to KLIA with a view to delivering it to a third party in Penang, was trafficking within the meaning of s. 2 DDA. (paras 20 & 21)

Legislation referred to:

Dangerous Drugs Act 1952, ss. 2, 37(d), 37A, 39B(1)(a), 39B(2)

For the accused - Goh Kim Lean (Liow Boon Lee with him); M/s Norma Goh & Co

For the prosecution - Wan Shaharuddin Wan Ladin; DPP

Reported by Usha Thiagarajah

JUDGMENT

KN Segara J:

[1] The accused, a Singapore citizen, was charged with trafficking in 1393 grams of 3,4-Methylenedioxymethamphetamine (MDMA), a dangerous drug under the Dangerous Drugs Act 1952 (DDA). The offence under s. 39B(1)(a) was alleged to have been committed on 29 January 2003, at about 7.50am, at the Kuala Lumpur International Airport.

[2] At about 7.50am, C/I Azhar bin Hj Hashim (SP2) a narcotics inspector, together with other police personnel, was on duty at the baggage reclaim area, Carousel C, Level 3, KLIA. SP2 saw the accused pick up a dark blue coloured luggage bag (exh. P15) and proceed to leave the baggage reclaim area. SP2, thereupon, identified himself as a police officer to the accused. He requested from the accused for his passport. The accused was at that time holding on to the luggage bag (exh. P15). It was in his custody and control.

[3] After having ascertained the accused's name and nationality upon sight of the passport (exh. P21), SP2 detained the accused. The accused was then, accompanied by police personnel SM Johari (SD3), Sjn Chew (SD2), Sjn Raman and Kpl Tahariff, led to the Police Narcotic Office at Level 3. The luggage bag (exh. P15) was still in the hands of the accused when he was being led

to the Police Narcotic Office. The accused did not at any time either assert that exh. P15 was not his luggage bag, or that he had found it to have been tempered with, upon reclaiming it at the baggage reclaim area, Carousel C. A

[4] When SP2 and the accused arrived at the Police Narcotic Office, SP2 again examined the accused's passport. He found a baggage claim tag (exh. P22) inside the passport. He compared the number on the baggage claim tag with the number on the baggage identification tag attached to the luggage bag (exh. P15). The numbers on both the tags tallied. SP2 administered a caution under s. 37A through the interpretation of Sjn Chew (SD2) in the Hokkien dialect. B C

[5] The luggage bag (exh. P15) had a zip and a combination lock to close it. At the Police Narcotic Office, SP2 observed that the luggage bag was zipped and locked whilst it was in the custody of the accused. SP2 instructed the accused to open the luggage bag in order to examine the contents of the said bag. D

[6] After the luggage bag was unlocked and opened by the accused, SP2 carried out an inspection of the said bag. The accused was beside SP2 when he carried out the inspection. Sjn Chew kept guard of the accused while SP2 carried out the inspection. Inside the bag, SP2 found a black empty canvas bag (exh. P16), sitting right on top of the clothing packed within the luggage bag. Upon further examination, after removing the canvas bag and the clothing, SP2 found a cake box (exh. P13). He took out the cake box and carried out a detailed examination of it. Inside the cake box, SP2 found 2 plastic packages containing blue coloured pills which he suspected to be "Ecstacy" pills. Before SP2 proceeded to examine the contents of the 2 plastic packages, he marked the packages as B1 and B2. E F G

[7] SP2 then opened plastic package B1 and counted the number of pills inside it. He found there were 5000 pills inside the package he had marked B1. He then placed the pills back into the same package B1 and proceeded to carry out a similar examination of the package he had marked B2. There were 4800 pills in B2. He placed back the 4800 pills in the original package B2. SP2 handed over all the exhibits to C/I Wan Mazlan bin Wan Abdul Rahman (SP4). H I

[8] The pills were sent to the chemist for analysis. The chemist, Nazaruddin bin Mohamed @ Ibrahim (SP1), confirmed that upon analysis he found the said pills contained the dangerous drug 3,4-Methylenedioxymethamphetamine (MDMA), weighing 1393 grammes.

[9] After the close of the prosecution's case, the accused was called upon to enter his defence, as the court was satisfied the prosecution had made out a *prima facie* case upon invoking s. 37(d) DDA to establish possession, because the bag (exh. P15) and the cake box containing the dangerous drug, was in the custody and control of the accused at the time of his arrest at KLIA. As the accused was keeping and carrying the drug in his luggage bag from abroad, there was *prima facie* evidence of trafficking, too, within the definition of s. 2 DDA.

[10] The accused elected to give his evidence on oath. He called 2 police witnesses, made available to the defence at the close of the prosecution's case, to testify on his behalf. However, the 2 police witnesses did not in any way help to promote the accused's defence of being an "innocent carrier" without knowledge of the dangerous drug.

[11] The accused testified that he went to Paris with a friend known as "Peter". He testified that Peter told him that he wanted to start a business in Paris and wanted him to visit his place of business because Peter intended to make him a partner in his food business, ala Penang cuisine.

[12] The accused testified that he arrived in Paris on 25 January 2003. He met Peter's friends, namely, Lau Ta and Ah Kau. After he had stayed in Paris for 3 days, Peter told him to go to Penang and meet a friend, Ah Lee, who also wanted to become a business partner of Peter. Ah Lee was a cook in Penang and Peter wanted the accused to inquire from him what food he wanted to sell in Paris.

[13] The accused left Paris on 28 January 2003. Peter sent him to the Paris airport. He had only brought one bag from Singapore to Paris. He also returned from Paris with one bag. When he was at the Paris airport he went to the toilet and then strolled in the airport, leaving his bag in the care of Peter. When he returned to Peter, the accused testified that Peter informed him that he had bought a box of cake and had kept it inside the accused's bag. Peter requested him to give the box of cake as a gift to Ah Lee

in Penang. The accused testified that he did open his bag in Paris as soon as Peter had informed him about the box of cake he had kept inside the bag. He said he saw a well packed box of cake inside his bag but he did not open it as he believed Peter when he told him it was a gift for his friend, Ah Lee, in Penang.

[14] The accused testified that Peter helped him to check-in his bag at the Paris airport while he sat on a chair. He further testified that Peter helped him to check-in the bag because Peter felt he was old.

[15] The accused testified that when the plane landed at KLIA he got off the plane and proceeded to go and claim his bag. He went to the carousel to look for his bag. He found his bag on the floor and on top of his bag there were several other bags. He testified that he took his bag and then began searching for the exit from the baggage reclaim area. He testified he approached an officer and inquired regarding the exit. The officer then asked him to follow him. He followed the officer, who brought him to an office. He alleged he was asked to open his bag, and then directed to sit on the floor.

[16] The accused denied that the black canvass bag (exh. P16) that was found inside his luggage bag belonged to him. He testified that he did not see the black canvass bag when he opened his luggage bag at the Paris airport upon being informed by Peter that he had kept a box of cake inside his luggage bag.

[17] The accused testified that he saw the box of cake when he was instructed to open his bag in the narcotic office by the officer. He said he did not know that there was drug inside the cake box. He said he did not suspect the box had anything other than a cake. The accused agreed, under cross-examination, that the cake box (exh. P13) was the same cake box he saw inside his bag (exh. P15) when he was in Paris. Under re-examination, the accused agreed that he could have brought the box of cake as a hand-carry. However, he allowed it to remain in the luggage (exh. P15) because it was not a creamed cake and he was lazy to carry it in his hand.

[18] Upon considering the accused's evidence on oath very carefully, there can be no dispute that the box of cake (exh. P13) was in the exclusive custody and control of the accused at all material times, immediately before he checked in his luggage bag (P15) at the Paris airport, and again, from the time he re-claimed

it upon his arrival at KLIA. From the accused's own testimony, I am satisfied that the exh. P13, which was recovered by the police (SP2), is the very same box kept in the luggage bag (P15) in Paris. There is no evidence at all that the luggage bag (exh. P15) was tempered with by any third party after the accused had checked-in the bag at the Paris airport and until it was reclaimed by the accused upon his arrival at KLIA. A *fortiori*, there is no evidence that the box of cake itself, inside exh. P15, was tempered with by any third party, after it was allegedly placed inside the bag by Peter in Paris. There was no assertion by the accused that he had lodged any complaint, be it with the airline carrier concerned or the police, alleging that his bag had been tempered with.

[19] I reject the accused's defence that a friend of his called Peter had placed the box (exh. P13) inside his luggage bag (exh. P15) at the Paris Airport. I find that the accused was in custody and had under his control the cake box (exh. P13) at all material times from Paris to KLIA. On the evidence before the court, I find the cake box contained dangerous drug, the subject matter of the charge herein.

[20] There is no evidence before me, upon which I can make a finding, that the character "Peter", alluded to by the accused, exists. The accused did not call Peter to testify on his behalf nor did the accused testify he had given all relevant particulars of Peter for the police to trace him in order to record his statement and verify from him that the accused was in fact an innocent carrier of the cake box, which was a gift from Peter to Ah Lee in Penang. In the circumstances, the accused has not rebutted (on a balance of probabilities) the statutory presumption under s. 37(d) DDA that he was in possession of the dangerous drug and knew the nature of such drug. The prosecution has, therefore, proved beyond reasonable doubt that the accused was in possession of the dangerous drug.

[21] The accused's overt act in keeping the dangerous drug inside the cake box in his bag and carrying it all the way from Paris to KLIA, with a view to delivering it to a third party in Penang, is "trafficking" within the meaning of s. 2 DDA. In the upshot, the accused is found guilty as charged, convicted and sentenced to death under s. 39B(2) DDA.